

SERVED: April 24, 1992

NTSB Order No. EA-3537

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D. C.
on the 9th day of April, 1992

BARRY LAMBERT HARRIS,
Acting Administrator,
Federal Aviation Administration,

Complainant,

Docket SE-9471

v.

LEE ARLEN RUHN,

Respondent.

OPINION AND ORDER

Respondent, acting pro se, has appealed from the oral initial decision of Administrative Law Judge Patrick G. Geraghty, rendered at the conclusion of an evidentiary hearing on April 6, 1989.¹ The law judge affirmed the Administrator's order alleging that respondent violated section 91.9 of the Federal

¹A copy of the decisional order and the law judge's comments incorporated by reference, both excerpted from the transcript, are attached.

Aviation Regulations ("FAR," 14 C.F.R. Part 91).² The Administrator alleged that respondent acted carelessly and endangered the lives and property of others by improperly discharging passengers from a hot air balloon. The order called for the suspension of respondent's commercial pilot certificate for 120 days. The law judge affirmed the order, but modified the suspension period to 80 days.³ In his appeal, respondent claims that the law judge erroneously found that respondent violated section 91.9. He also challenges the testimony and credibility of witnesses, and maintains that his actions were not careless.⁴

The mishap at the core of this controversy occurred on August 8, 1987, when respondent operated, as pilot-in-command, civil aircraft N40356, a Raven Balloon Model S-55, on a flight near Jamestown, North Dakota. He carried three passengers: a man, a woman, and a 12 or 13 year old boy. Respondent's balloon was one of several competing in a "hare and hound" race, the object of which was to catch up with the balloon in the lead and land as closely as possible to it. The adult male passenger

²"§ 91.9 Careless or reckless operation.

No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another."

³The Administrator did not appeal the reduction in sanction; therefore, we will not address that issue.

⁴The Administrator's motion to dismiss respondent's appeal for failure to file a timely appeal brief is denied. Respondent's brief, albeit incorrectly addressed for delivery to either the FAA or the Board, was timely filed (mailed) and, in fact, was received by the FAA. We therefore believe the brief, a copy of which was forwarded to the Board, should be accepted. See Administrator v. Hordon, NTSB Order No. EA-3513 (1992).

testified that after they had ascended higher than the other balloons, the fuel supply began to get low. At that point, respondent decided to land in a field and drop off his passengers so he could continue the race.

Respondent testified that he instructed the passengers to keep their weight on the gondola as they were exiting until all the passengers disembarked. The adult male passenger stated that he was the first to exit the gondola after the balloon touched down and that, while the boy was trying to climb out of the basket, the balloon began to rise again. Respondent claimed that the boy exited the balloon first and that both passengers had their feet on the ground before the balloon began to rise. In any event, all are in agreement that both passengers held onto the side of the basket as the balloon rose to at least 40 feet above the ground. When the balloon descended a second time, the boy, the woman, and the man either fell or jumped from the gondola. Two passengers were slightly injured as a result of the incident.⁵ Respondent claims that the balloon's sudden ascent after the initial landing was caused by an unforeseen thermal action and was thus beyond his control.

We have reviewed the record, the arguments on appeal, and the oral decision of Administrative Law Judge Geraghty. We

⁵The adult male passenger testified that he saw the woman lying on the ground "with blood all over her." He said that later he was in pain, had dizzy spells, hot and cold flashes, and blacked out .

believe the decision of Judge Geraghty to be well-reasoned,⁶ and we adopt his findings and conclusions as our own. Respondent's allegations on appeal of "perjury" appear to reflect a non-specialist's misunderstanding of the fact that reasonable disagreements over contested events -- the norm in trials -- are a far cry from deliberate, intentional misrepresentation. Respondent's further claims regarding mathematical calculations, claims which are too vague to be considered in detail, are beside the point in any event, as the law judge placed no reliance on a determination of gas temperatures. He found that a touch-and-go landing on a dark, plowed field on an August morning was predictably tricky. Given his choice of landing location, and its susceptibility to thermals, the respondent failed to properly vent and cool his balloon, thus failing to exercise the care necessary to safeguard his passengers.

⁶While we have some hesitation regarding Judge Geraghty's disposition of sanction, we note that the matter is not before us on appeal.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The Administrator's order, as modified by the initial decision is affirmed; and
3. The 80-day suspension of respondent's airman certificate shall begin 30 days after service of this order.⁷

COUGHLIN, Acting Chairman, LAUBER, KOLSTAD, HART, and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

⁷For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to FAR § 61.19(f).